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IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM, 19___

NO. _____

FRED KILBRIDE,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

LOS ANGELES BOARD OF EDUCATION,

Real Party in Interest

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND DISTRICT

The Petitioner, Fred Kilbride, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California.

OPINIONS AND ORDERS IN THE COURTS BELOW

No opinions were rendered in the courts below. (See Appendix)

On April 24, 1975, the Court of Appeal, State of California, Second Appellate District, made its order denying Petitioner's application for a writ of prohibition, without opinion. (See Appendix)

On May 22, 1975, the Supreme Court, State of California, made its order denying Petitioner's application for a hearing, without opinion. (See Appendix)

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S. Code, Section 1257 (3).

QUESTION PRESENTED

In a taxpayer's action brought under the First Amendment to enjoin the promotion of

religion by a public elementary school, may the plaintiff be compelled to disclose his personal religious convictions in order to avoid dismissal of two causes of action which allege that the school promulgates religious beliefs which are contrary to those of the parents of some of the school's pupils, where it appears that the plaintiff also has children of his own among the school's pupils?

STATEMENT OF THE CASE*

On June 20, 1974, Petitioner and his spouse filed a taxpayer's suit in the Superior Court, Los Angeles County, to enjoin the Los Angeles Board of Education (hereinafter referred to as "The Board") from continuing to present, in one of its elementary schools, certain materials in its annual Christmas programs, which, as the complaint alleged, substantially promote religious

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*The record in the courts below consists only of Petitioner's Petitions and Real Party's Responses, and is therefore not lodged herewith.

beliefs and substantially impair the free exercise of religion as to the school children and as to the children's parents and guardians, in violation of the Establishment and Free Exercise of Religion clauses of the First Amendment to the U.S. Constitution. The suit set forth 42 causes of action.

The Board's answer admitted the activities described in the complaint but denied that they offend the First Amendment. Pre-trial discovery procedures were commenced. Ultimately, as Petitioner will describe in some detail hereinbelow, the Board procured an order of court compelling Petitioner and his spouse to disclose their personal religious convictions, or, in the alternative, to suffer dismissal of the 25th and 26th Causes of Action.

The 25th and 26th Causes of Action alleged,

"The activities described herein teach, foster and promote belief in and actual or feigned adherence to religious beliefs which are contrary to the beliefs of the parents and guardians of

some of the children attending the said [name of school] elementary school."

On October 8, 1974, the Board addressed interrogatories to Petitioner and his spouse, including the following:

"68. Did the 1973 Program complained of offend you in your religious beliefs or non-beliefs?

"69. If the answer to Interrogatory No. 68 is yes, in what way did it offend you?

"70. If the answer to Interrogatory No. 68 is yes, what specifically was it in the program, or about the program, that offended you in your religious beliefs or non-beliefs?"

Petitioner and his spouse formally declined to include their religious beliefs in their responses, and the Board moved for an order compelling disclosure. The trial court granted the motion, and provided in its order that the sanction for refusal would be dismissal of Petitioner's 25th and 26th Causes of Action. In making this order the trial court held that disclosure was

required by the facts (1) that those causes of action alleged that the school was promoting religious beliefs which were contrary to those of "some" parents in the area, and (2) Petitioner and his spouse, being parents in the area, were potential members of that class.

Thereafter, Petitioner promptly applied for a Writ of Prohibition in the California Court of Appeal (denied without opinion on April 24, 1975) and for a hearing in the California Supreme Court (denied without opinion on May 22, 1975).

In each of the courts below, Petitioner and his spouse contended that an order compelling disclosure of their religious beliefs violated the 1st and 14th Amendments to the U. S. Constitution, in that it unnecessarily conditioned and hampered access to the courts to vindicate constitutional rights.

By virtue of these proceedings, the trial court's order requiring disclosure of the religious beliefs of Petitioner and his spouse remains in effect.

On June 5, 1975, Petitioner and the Board stipulated that the case be removed from the trial court's trial calendar in order to allow Petitioner time to present the instant petition to this court.

STATEMENT OF REASONS FOR GRANTING THE WRIT

The general importance of the "procedural" issue which arises in the instant case may be greater than the "substantive" issues. Petitioner submits that the effect of the trial court's order is to impose a religious test, controlling a taxpayer's right to protect himself, and his neighbors, from state action which tends to establish religion or to impair its free exercise.

If the taxpayer is willing to reveal his private religious convictions, he will be permitted to complain of such state activity; if he will not make the disclosure, he cannot maintain the action.

True enough, he may maintain <u>other</u> complaints against governmental religious activity, but he

may not maintain an action to prevent government from promulgating religious doctrine which is contrary to the beliefs of some persons in the area or district involved, unless he is willing to waive or give up his personal right of religious privacy.

Such a state of affairs, it is submitted, is manifestly intolerable. The governmental probing which is seen in the instant case strikes at the very root of the First Amendment, by impairing the citizen's free access to the courts.

Constitutional guaranties may, of course, be waived directly or be deemed waived by conduct, e.g., Barker v. Wingo (1972) 407 U.S. 514, 33 L.Ed.2d. 101, 114 - 116, 92 S.Ct. 2182 ("Speedy Trial").

It is also true that constitutional guaranties may, where necessary, be compelled to yield under the compulsion of an overriding public requirement, e.g., Reynolds v. U.S. (1879) 98 U.S. 145, 25 L.Ed. 244 (Polygamy and the 1st Amendment).

In the instant case, however, there arises no waiver from Petitioner's mere allegation that the beliefs allegedly propagated by the school conflict with the beliefs of "some" residents, and the public benefit which may possibly be derived from the disclosure which the Board seeks is trivial in comparison to the magnitude of the right which it invades.

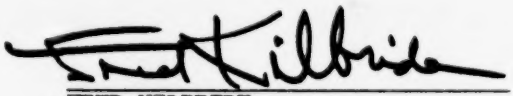
It goes almost without saying that, whatever the content of Petitioner's religious beliefs may be, they will be offensive to or unpopular with some of his neighbors. If he is Christian, he offends non-Christians and Atheists. If he is Atheist, he offends all devout believers. If he is Jew, he offends non-Jews, and so forth. Therefore, in considering the merit of this application, this court must assume that the governmental entity (The Board) demands public avowal by Petitioner of unpopular or distasteful religious beliefs.

The discouraging, or "chilling" effect of the order in question is too plain to bear

discussion, and the resulting issue affects not only Petitioner, but all persons who are, or who may become, similarly situated.

WHEREFORE, Petitioner prays that this court issue its writ of certiorari to the Court of Appeal, State of California, Second District, to resolve this issue.

DATED: July 11, 1975



FRED KILBRIDE,
Petitioner,
in Propria Persona
403 West College Street
Los Angeles, California 90012

APPENDIX

ORDERS MADE IN THE COURTS BELOW:

(1) In the Court of Appeal, State of California, Second District:

"No. 2d Civil 45973

Kilbride v. Superior Court

April 24, 1975

Petition denied."

(2) In the Supreme Court, State of California:

"No. 2d Civil 45973

Kilbride v. Superior Court

May 22, 1975

Petition for hearing denied."

OPINIONS

No opinions.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 403 West College Street, Suite 107, Los Angeles, California 90012.

On July 11, 1975, pursuant to Rules 33.1 and 33.3(c) of Rules of The Supreme Court, I served the within PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND DISTRICT on the Respondent and Real Party in Interest in said action, by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, at the United States Post Office, Los Angeles, California, addressed as follows:

SUPERIOR COURT, County of Los Angeles, Department North Central B, 300 E. Olive Avenue, Burbank, California 91502

JOHN H. LARSON, County Counsel, Branch County Counsel Office, 450 North Grand Avenue, Room A-425, Los Angeles, California 90012, Attn: RICHARD K. MASON, Deputy County Counsel

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on July 11, 1975, at Los Angeles, California.

Janet Taitt
JANET TAITT

Subscribed and sworn to before me this 11th day of July, 1975.

Frank Renzi
Notary Public in and for the County of Los Angeles, State of California

OFFICIAL SEAL
FRANK RENZI, JR.
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Jan. 27, 1976

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

NO. 75-87

FRED KILBRIDE,

Petitioner,

vs.

SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

LOS ANGELES BOARD OF EDUCATION,

Real Party in Interest

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND DISTRICT

Real Party in Interest, The Los Angeles Board of Education, hereby opposes the Petition for Writ of Certiorari on file herein.

QUESTION PRESENTED

Whether Petitioner may plead causes of action complaining that certain activities of a public elementary school violate the Establishment and Free Exercise Clauses, in that the activities are contrary to the beliefs of the parents and guardians of some of the children attending said school, without having to answer interrogatories directed to the manner in which the activities infringe upon his beliefs or non-beliefs, when it is admitted that he is a parent who is offended in his beliefs or non-beliefs by said activities?

STATEMENT OF THE CASE

In his Statement of the Case Petitioner has accurately set forth the pertinent history of the subject lawsuit and the circumstances which occasion the present petition, except for the following.

First, with respect to the Twenty-

Fifth and Twenty-Sixth Causes of Action (Petition, pages 4-5), Petitioner and his spouse are admitted parents of two children who attend the school in question.

Second, Interrogatory No. 68 (Petition, page 5), is not in issue here. It was answered in the affirmative by Petitioner and his spouse, thus providing the basis for Respondent Court's order that Petitioner provide further answers to Interrogatories 69 and 70.

Finally, it should be noted that Real Party in Interest had, prior to submission of the subject Interrogatories to Petitioner, unsuccessfully moved Respondent Court to strike the subject Causes of Action from the complaint.

ARGUMENT

PETITIONER, HAVING MADE THE SUBJECT CAUSES OF ACTION A PART OF HIS LAW-SUIT, HAS WAIVED ANY RIGHTS OR PRIVILEGES CONCERNING THE SUBJECT MATTER.

It cannot be overemphasized that Petitioner and his spouse have raised the issue concerning the beliefs of some of the parents of some of the children attending the school. Petitioner has made the allegations concerning parental beliefs separate causes of action within the complaint.

Given this fact, it is surely appropriate to inquire as to the basis for Petitioner's specific allegation. As noted above, Real Party in Interest had earlier moved Respondent Court to have the subject causes of action stricken from the complaint. If they

are left in, they should be the proper subject of analysis.

The discovery sought must be seen to meet even the narrowest definition of relevancy. Petitioner clearly falls within the class of persons contemplated by the subject Causes of Action: he is a parent who admits that the programs complained of offend him in his religious beliefs or non-beliefs. The discovery is thus directly relevant to those claims.

Furthermore, the discovery is directly relevant to the issue of Petitioner's standing to sue, especially under the Free Exercise Clause. There is a serious issue (into which Real Party should be entitled to inquire) as to Petitioner's standing to sue in the event he does not allege or intend to show infringement upon his particular religious freedoms. See Abington School District v. Schempp, 374 U.S.

203, 224, Note 9, 83 S.Ct. 1569, 10 L.Ed.2d 844, 859, Note 9 (1963), and cases cited therein.

Petitioner, having made the subject Causes of Action a part of his lawsuit, having made both Establishment and Free Exercise claims, and having expressly admitted being offended in his beliefs or non-beliefs by the programs in question, has waived any rights or privileges concerning the subject matter. As Petitioner himself has pointed out, "Constitutional guarantees may, of course, be waived directly or be deemed waived by conduct * * *," citing Barker v. Wingo 407 U.S. 514, 526, 92 S.Ct. 2182, 33 L.Ed.2d 101, 114 (1972).

Contrary to Petitioner's claim that the order of Respondent Court in favor of discovery "imposes a religious test" (Petition, page 7) or "chills" or otherwise abridges the exercise of constitutional rights (Ibid., page 9),

the Respondent Court's order is not in fact forcing Petitioner to do anything, nor is it impairing Petitioner's ability to exercise his rights.

Were the Twenty-Fifth and Twenty-Sixth Causes of Action the only possible legal basis for maintaining the action, Petitioner might have an argument that an impermissible condition upon the exercise of his rights would be involved, and the Court might be put to the test of balancing the claimed right of privacy against the prosecution of the lawsuit and the discovery rights of Real Party in Interest.

But even in that case both the waiver and standing arguments exist as compelling reasons why Real Party in Interest would nonetheless be entitled to the discovery it seeks.

When, as in the present case, there are 42 causes of action predicated

upon the same event (certain songs being sung at a holiday concert, and related matter), it is hardly possible to argue that the discovery sought impairs, burdens, abridges, or chills the exercise of any conceivable constitutional right. On the contrary, Petitioner seeks to prevent inquiry into an area the subject matter of which he has raised.

There is no constitutional right to place a cause of action in a lawsuit while at the same time attempting to forestall an inquiry into the subject matter of that cause of action. It would thus appear more accurate to say that Petitioner attempts to abridge the rights of Real Party in Interest.

WHEREFORE, Real Party in Interest prays that this Court deny the Petition for Writ of Certiorari.

DATED: August 11, 1975

JOHN H. LARSON
County Counsel

By Allan B. McKittrick
Allan B. McKittrick
Division Chief

Attorneys for Real
Party In Interest

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 450 North Grand Avenue, Room A-333, Los Angeles, California 90012.

On August 13, 1975, pursuant to Rules 33.1 and 33.3(c) of Rules of the Supreme Court, I served the within BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, STATE OF CALIFORNIA, SECOND DISTRICT on the Petitioner in said action, by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, at the United States Post Office, Los Angeles, California, addressed as follows:

SUPERIOR COURT, County of Los Angeles, Department North Central B, 300 E. Olive Avenue, Burbank, California 91502

FRED KILBRIDE, Attorney at Law, 403 West College Street, Los Angeles, California 90012

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 13, 1975, at Los Angeles, California.

Jimmie Curtis

Subscribed and sworn to before me this 13th day of August, 1975.

Yolanda Guzman
Notary Public in and for the County of Los Angeles State of California

OFFICIAL SEAL
YOLANDA GUZMAN
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Dec. 1, 1977